

Respondent raised the question of whether an accident occurred on the date alleged. In support of its position, respondent provided information from State Farm Insurance, the insurance company liable for any automobile accident involving respondent's car. An investigation failed to show damages sustained to either respondent's vehicle or a truck being driven by the other party, Mr. Gordon Kinkead. Evidence presented at the preliminary hearing included pictures of both vehicles, front and back, and indicated no damage sustained to either vehicle.

The description of the accident provided by claimant and Mr. Ingram was of an automobile crash on I-135 in Wichita sufficient to cause claimant to suffer a herniated disk in his neck. Investigation provided by State Farm Insurance and the testimony of Mr. Kinkead indicated that no contact occurred between the vehicles on December 1, 1995. Mr. Kinkead was contacted by the Highway Patrol whose subsequent investigation also found no contact occurred between the vehicles. It is difficult to understand how the impact described by claimant and Mr. Ingram, at speeds approaching 40-50 miles per hour, could have occurred with no resultant damage to either vehicle.

In proceedings under the Workers Compensation Act, the burden of proof is on the claimant to establish the claimant's right to an award of compensation by proving the various conditions upon which the claimant's right depends. This burden must be established by a preponderance of the credible evidence. See K.S.A. 44- 501(a) and K.S.A. 44-508(g). See also Box v. Cessna Aircraft Company, 236 Kan. 237, 689 P.2d 871 (1984). Therefore, the Appeals Board finds that claimant has failed to prove he suffered accidental injury on the date alleged.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated December 16, 1996, should be, and is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of February 1997.

BOARD MEMBER

c: Joseph Seiwert, Wichita, Ks
Darla J. Lilley, Wichita, Ks
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director